

WILLIAM A. HENDREY

IBLA 77-559

Decided December 5, 1977

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting geothermal lease application N-16998.

Affirmed.

1. Geothermal Leases: Generally -- Geothermal Leases: Applications: Generally -- Geothermal Leases: Discretion to Lease

This Department may lease national forest lands for geothermal resources only with the consent of the Department of Agriculture. The Bureau of Land Management is bound by the finding of that Department that geothermal leasing for such lands is inimical to the public interest.

APPEARANCES: William A. Hendrey, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

William A. Hendrey has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated August 10, 1977, rejecting geothermal lease application N-16998. The lands sought for leasing were located in the Toiyabe National Forest. BLM rejected the application on the recommendation of the Acting Regional Forester, Forest Service, Ogden, Utah. By letter to the Utah State Director, BLM, dated August 5, 1977, the Acting Regional Forester stated:

We recommend rejection of geothermal lease application, N-16998, as the entire lease area is in a "no surface occupancy" area of steep slopes, fragile soils, and high erosion potential. Directional drilling is not feasible.

These recommendations are based on the Pyramid Area Environmental Analysis Report prepared by the Carson City District, Bureau of Land Management.

Appellant argues on appeal that BLM undertook no independent study of the lease application area and that the rejection of the application was based solely on a letter to BLM from the Forest Service, dated August 5, 1977.

Appellant states that he would be willing to accept a no surface occupancy stipulation, and that inspection of the surface of the area would indicate no problem in issuance of a lease with such a stipulation, and that directional drilling could be undertaken.

Appellant's argument concerning the Forest Service recommendation would have cogency if his application related to leasing national forest lands for oil and gas. This Board has held that in the leasing of national forest public lands for oil and gas, the Department will give careful consideration to the recommendations of the Forest Service, but the latter does not have final authority over leasing public lands. Beverley Lasrich, 22 IBLA 202, 203 (1975); W. T. Stalls, 17 IBLA 175, 177 (1974).

[1] On the other hand, the leasing of national forest lands for geothermal resources may be done only with the consent of the Department of Agriculture. BLM is bound by the adverse recommendation of that Department with respect to geothermal lease applications for such lands. 1/ That finding recited that such leasing was inimical to the public interest.

Therefore, despite the fact that the Forest Service recommendation consisted merely of the statement of the Acting Regional Forester, it is not within the province of BLM to require supporting documents to justify the recommendation. It is enough, under the Geothermal Steam Act, that the Forest Service fails to give its consent to lease. Cf. Merlin W. Tripp, Sr., 21 IBLA 85 (1975).

Appellant should direct any inquiry as to the reasons for, or the basis of, the objection to leasing to the Forest Service.

1/ Section 15(b) of the Geothermal Steam Act of December 24, 1970, 30 U.S.C. § 1014(b) (1970), reads in pertinent part:

"(b) Geothermal leases for lands withdrawn or acquired in aid of functions of the Department of Agriculture may be issued only with the consent of, and subject to such terms and conditions as may be prescribed by, the head of that Department to insure adequate utilization of the lands for the purposes for which they were withdrawn or acquired."

See also 43 CFR 3201.1-3.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Newton Frishberg
Chief Administrative Judge

